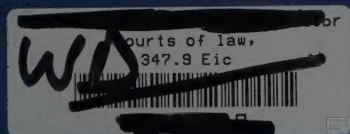


COURTS OF LAW



BY JAMES A. EICHNER
Illustrated by Marvin Besunder

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OF LAW



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◀—A FIRST BOOK—▶

by James A. Eichner
illustrated by Marvin Besunder

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To Chris and Gale,
and to
Nancy, Andy, Susan,
Charles, and Claire

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A summons may mean a day in court.

A CASE IN COURT

The most common type of lawsuit tried in American courts to-day is the damage suit arising out of the operation of automobiles.

Therefore, to get an idea of how our judicial system works, let us reconstruct an automobile accident.

Sam Simpson was driving his car west on Fifth Street near the intersection with Plum Road. A car driven by Bill Barnes was proceeding southbound on Plum, just north of Fifth. Neither driver put on his brakes until it was too late. Bill's auto skidded into Sam's.

Bill, whose car had had the right of way since it was on the right of Sam's, was injured in the crash. His lawyer wrote a letter to Sam's insurance company, advising that Bill would be making a claim for the damages that he had suffered in the accident.

A few weeks later, Bill's attorney added up what Bill had lost in medical bills, wages, and repairs to his car. The lawyer also obtained reports from Bill's doctors describing his injuries. All this information was sent to Sam's insurance company, with a demand for a sum of money to settle the case.

Sam's insurance company agreed that Bill's injuries were severe enough to justify payment of the specified amount, *if* the accident had been entirely Sam's fault. But, the company pointed out, there was evidence that Bill was driving at an unlawful speed and not keeping a proper lookout for other cars, and that such negligence on Bill's part was one of the causes of the wreck. Therefore, the insurance company offered to settle for much less than what Bill's lawyer thought the case was worth.

So, Bill prepared to sue. His attorney prepared a typewritten paper called a *complaint*. It stated simply, in numbered paragraphs, the place, time, and date of the collision; the directions the two drivers were traveling; a statement that the crash was directly caused by Sam's failure to drive with reasonable care; an allegation that Bill had suffered painful and permanent injuries and had incurred large medical and repair bills and lost income; and finally, a demand that Bill be awarded \$25,000 for his misery.

Bill's lawyer handed this complaint and an extra copy to the clerk of the court, along with a check covering the fees charged for filing and serving the complaint. The clerk attached a paper called a *summons* and sent it to the sheriff's office. The sheriff took the paper to Sam's house. When Sam answered the door, he was handed the summons and the copy of the complaint. On the original complaint paper, the sheriff recorded when and where he had delivered the summons and copy to Sam. Then he returned the paper to the clerk of the court. Thus, the complaint was *served* on Sam, and Sam was brought within the power of the court.

The summons informed Sam that he must file papers in response with the court within twenty-one days. Otherwise, judgment might be rendered against him *by default*; that is, he would lose the case without having an opportunity to defend himself. Sam did not want this to happen, so he promptly sent the papers to his insurance company. The company forwarded the papers to its attorney, who began to figure out how to respond.

First, the company attorney considered whether the suit was filed in the proper court. If not, he would file a written response called a *plea*, saying that the court did not have *jurisdiction* (power to decide) over the case, or that because of the location of the accident the named court would not provide proper *venue* (place of

trial) for this particular suit. But since the court chosen by Bill's lawyer was a proper one to hear automobile accident cases, and since it also had power to decide disputes in the county where Bill and Sam had collided, the company attorney decided that such a plea was not appropriate.

Next, the attorney carefully read Bill's complaint to see if it failed to include any necessary statement. If it had, he might file a *demurrer*, a paper telling the court that even if everything alleged in Bill's complaint were proven, Bill would still not have a valid legal claim against Sam. However, Sam's attorney (in this case the defense attorney) decided that the complaint adequately stated a claim against his client. The only thing to do was to file an *answer*, and to ask for a trial on the questions involved.

Sam's typewritten answer admitted what Bill's complaint had charged as to the time and place of the accident. But it denied that the accident was caused by any negligence of Sam's. It claimed that Bill's failure to use reasonable care was a cause of the collision, and it also denied that Bill was hurt as badly as he claimed.

Sam's lawyer sent the original of his answer to the court clerk for filing, and he also sent a copy to Bill's attorney.

When all these papers were filed, the case of Bill Barnes against Sam Simpson was *matured*; that is, by filing the papers (called *pleadings*), each side had given the other its version of the controversy, and the matters still in dispute between them had been outlined in the *allegations* (charges) of the complaint and the admissions and denials in the answer.

At the beginning of the next term of court (in some states a new term begins every two or three months), Bill's and Sam's lawyers, along with other attorneys who practiced in the county, attended the court's *docket call*. The court clerk read off the name of each

matured case not yet set for trial, and the judge assigned one or more days for the trial of each such case.

By this time, each side had conducted its own investigation into the facts of the case. Now the time had come for each lawyer to find out what his *adversary* (opponent) knew. This was done by means of the pretrial procedure called *discovery*.

Bill's lawyer filed a set of typewritten questions with the court, sending a copy to Sam's lawyer, or counsel. These questions, called *interrogatories*, asked the names of witnesses to the crash that were known to Sam or to his attorney, details on the speed of Sam's car and how the accident had happened, the names and addresses of persons whom Sam would call to testify at the trial, and other material. Sam's lawyer then filed numbered answers to those questions with the court, sending a copy to Bill's attorney. Sam had signed this statement after taking an oath before a notary public that the material in the answers was true. A *notary public* is allowed to certify that certain documents are true as presented.

Not all of Bill's questions were answered, however. Sam's attorney felt that some were improper, so he filed a paper, called *objections to interrogatories*, and obtained a hearing before the judge, who decided whether or not Sam was required to answer those particular inquiries.

Of course, Sam's lawyer wanted to discover what Bill and his attorney knew about the accident and about Bill's injuries, too. But instead of filing interrogatories, he decided to take Bill's *deposition* (his oral testimony) before a notary public, so that he could get a look at the *plaintiff* (the name given to the one who had brought the suit to court — in this case, Bill) and could judge how Bill would appear to a jury. Sam's lawyer also wanted to find out what Bill knew. The attorney filed a *notice to take deposition*, stat-

ing the time and place it would be taken. He sent a copy to Bill's lawyer. The notice directed him to have his client present at the appointed time.

At the stated time, in the office of Sam's lawyer, the notary public administered an oath to Bill to tell the truth. Then he proceeded to take down, word for word, the questions asked by Sam's attorney, and also Bill's answers. The questions ranged over all that had happened on the day of the accident, how much time Bill had lost from work before and after his injury, his prior medical history, and what persons had seen the collision.

For the most part, Bill's lawyer remained silent during his client's deposition. Once or twice, when he thought that improper questions were being asked, he objected and instructed his client not to answer. (If Sam's attorney insisted on an answer, he could go to the judge and ask him to rule on whether the question was proper.) A couple of weeks after the taking of the deposition, the notary public, who had recorded it in shorthand, sent typewritten copies to the court and to both lawyers.

Sam's lawyer still was not convinced that Bill's doctors were correct in their reports concerning Bill's physical injuries. So he went to the judge and obtained an order for a *subpoena duces tecum*, an order directed to every doctor who treated Bill after, and even before, the accident. It commanded the doctors to deliver their records on Bill to the court a certain number of days before trial. There Sam's lawyer would examine the records. He also asked the judge to require Bill to submit to an independent medical examination by a physician chosen by Sam's lawyer or by the judge. This doctor looked Bill over and wrote a report of his findings to the court, with copies to the two lawyers.

Next, each attorney asked the clerk of the court to issue *sub-*

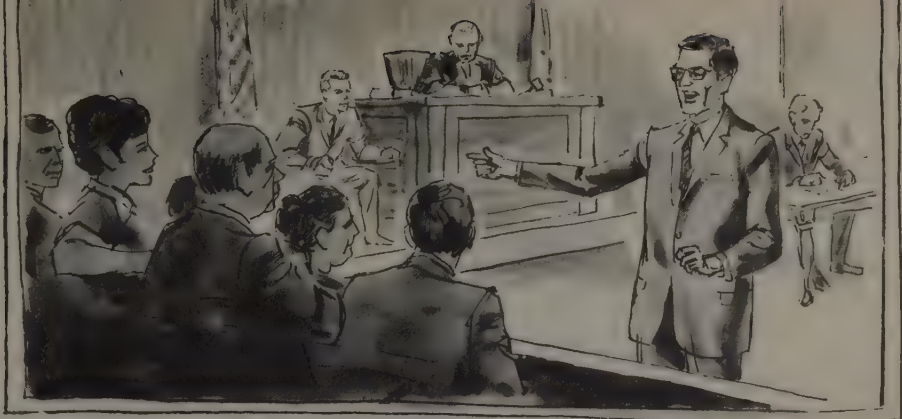
poenas (suh-pea-nas) commanding doctors and other witnesses to appear, to testify at the trial. A subpoena orders a person to appear in court, and involves a penalty (usually a fine) for failure to do so.

In the meantime, jury commissioners appointed by the court had selected a number of citizens to serve as jurors during the current term of court. Some of these people were told by the clerk to appear for the trial of Bill Barnes against Sam Simpson. The lawyers for the plaintiff (Bill) and the defendant (Sam) carefully examined the list of jurors called for the trial. They checked the jurors' addresses and occupations, and what kind of verdicts they had rendered in other cases. The lawyers asked their clients and friends what, if anything, they knew about these jurors — would they be likely to be favorable or unfavorable to the injured party, or to the defendant?

Shortly before trial, each lawyer conferred again with the witnesses who ~~would~~^{will} testify. They ~~did~~^{do} this to try to eliminate, as far as possible, any unpleasant surprises during the actual trial.

Finally, the panel of jurors filed into the courtroom where the trial ~~was~~^{is} to take place. The attorneys for the plaintiff and defendant looked ~~at~~^{ed} them over closely as they answered the clerk's roll call.

The judge explained^s to the jurors what the case ~~was~~^{is} about, and asked^s whether any of them know any of the parties or their lawyers, whether they had seen the accident or had formed any opinions about it, and whether there ~~was~~^{is} any reason why they could not render a fair verdict, according to the law and the evidence. Each lawyer then ~~had~~^{has} the opportunity to ask the jury panel additional questions. Some jurors might be challenged for cause — told to go home because it appeared that they could not render a fair verdict. (For instance, a juror could be challenged for cause if he had already expressed an opinion about the merits of the case in ques-



COURT IN SESSION

tion.) Then each lawyer ^{is} ~~was~~ allowed to strike from the panel additional persons whom he did not want to sit on the jury, but whom he could not validly challenge for cause. This is known as a *peremptory challenge*. (For example, in a trial involving a factory worker, the defendant's lawyer might ask a business owner to be removed from the jury, feeling that the businessman might not be very sympathetic to a factory worker.) The jurors ~~who remained~~ ^{are} sworn to render a true verdict, according to the law and the evidence. Then they ~~take~~ ^{take} their seats in the jury box.

Usually, the lawyer for the plaintiff (~~in this case Bill~~) opens the proceedings with an *opening statement*. ^{This is} a summary of what the controversy is about and what he expects to prove. Next, the defendant's (~~Sam's~~) attorney makes a similar statement, explaining what he contends the evidence will be. ~~However, sometimes he does not do this until the plaintiff has finished presenting his evidence.~~

Now ~~it~~ is time for the party which has the *burden of proof* in establishing his case to start presenting evidence. ~~Usually the burden of proof is on the plaintiff, but in some cases, such as a suit to~~



enforce payment of a note, the burden of proof may rest with the defendant, who must show that he did complete payment. Some of the evidence is *oral testimony*, ^{that is} statements made by witnesses who are first given an oath to tell "the truth, the whole truth, and nothing but the truth." Then they are asked to sit in a chair called the *witness stand*, which is generally facing the jury and next to the raised bench where the judge sits. From there, they answer questions put to them by the attorneys, occasionally by the judge, and once in a while by a member of the jury.

First the plaintiff's lawyer, who has called the witness, asks questions. This is called the *direct examination*. If he asks a question which is not relevant, ~~not directly connected with the case~~, the opposing lawyer will often say "Object," and the judge must de-

any is or not.
cide whether ~~or not~~ the question ~~was~~ proper. For instance, the lawyer for the plaintiff might ask the witness if Bill is a conscientious worker on his job. Sam's lawyer may object, saying that such information has nothing to do with the accident. Bill's lawyer might say that he is trying to show that Bill is such a careful person that he would not have been careless when driving his car. The judge will have to decide whether to allow the question or not. If he does allow it, he says "Objection overruled"; if he does not allow it, he says "Objection sustained."

When questioning a witness he has called, the plaintiff's lawyer cannot ask *leading questions* — those which suggest the answers that he wants. If he does, the defendant's attorney will object once again, telling the judge that his opponent is "leading the witness." Again, the final decision rests with the judge.

When the plaintiff's attorney has finished questioning his witness, the defendant's lawyer has a chance to ask questions on *cross-examination*. The cross-examiner has much greater freedom in the kind of questions he can ask than does the lawyer on direct examination, because it is generally assumed that the witness on cross-examination is not sympathetic to the questioner's client.

The cross-examiner generally tries to lessen the impact of the testimony which the witness has given on direct examination. He may seek to show that the witness has made a prior inconsistent statement, or that he did not have a good opportunity to observe or remember what he has testified about, or that he is prejudiced in some way, or that he has some special interest in the outcome of the case.

Cross-examination has been called the greatest device for establishing the truth ever invented by man. It can be dangerous, however. Some lawyers say they never ask a question on cross-

examination unless they know what the answer will be or have some way of disproving that answer. An ineffective cross-examination merely gives the witness the chance to repeat to the jury what he has already testified to in direct examination. This tends to strengthen his answer. Of course, the cross-examiner wishes, instead, to weaken the testimony.

When the cross-examination is finished, the plaintiff's lawyer has an opportunity to question the witness again, on *redirect examination*. He is not supposed to go into new material at this time. The purpose of the redirect examination is to clear up or to counter some of the testimony that has been given on cross-examination.

After the redirect, the defendant's counsel has a chance to question the witness again on *recross examination*. He is supposed to confine his questions to areas covered on the redirect examination.

Witnesses are called *lay* witnesses and *expert* witnesses. For example, those who have witnessed an automobile accident are lay witnesses. They are supposed to tell only the facts they have observed personally, and they are not permitted to express opinions.

Expert witnesses are allowed to give their opinions, once they have qualified as experts — persons having a greater knowledge on some matters than the average person. Doctors are experts in the effect of automobile accidents on the human body. An engineer might be called as an expert to explain why a piece of machinery caused an accident. A brickmason might be called to testify on the proper way of laying brick; a mechanic, on what caused an automobile to go out of control; an accountant, on the proper way to keep books. Occasionally, there is an objection that a witness is not an expert in the field of knowledge involved in the controversy. In fact, a cross-examiner will try to throw doubt on the qualifications of the expert witness. If he is not so qualified, he cannot

express an expert opinion from the witness stand. Usually, for this reason, the lawyer calling an expert witness to testify begins his questioning by asking the witness to state the facts of his education and experience which qualify him as an expert on the subject under inquiry.

When the examination of one witness for the plaintiff is finished, the plaintiff's lawyer calls another, until he has completed his case. Then the plaintiff *rests* — that is, the lawyer tells the court he has no further evidence to present.

Now it is the defendant's turn to call his witnesses. The same questioning procedure goes on, except that the roles are reversed. Now the attorney for the defendant starts the questioning, and the plaintiff's lawyer engages in cross-examination. When the defendant's evidence is completed, sometimes the plaintiff offers *rebuttal* evidence to contradict it. Then sometimes the defendant may offer *surrebuttal* evidence.

Some witnesses do not testify "live" from the witness stand, but have their testimony read from a deposition taken before the trial. The deposition is a series of questions by the lawyers and answers by the witness, taken down in shorthand and transcribed. Usually, if a witness lives a long distance from the place of trial, or will be away on a trip on the trial date, or is sick and unable to come to court in person, the court will allow his testimony to be presented in this way.

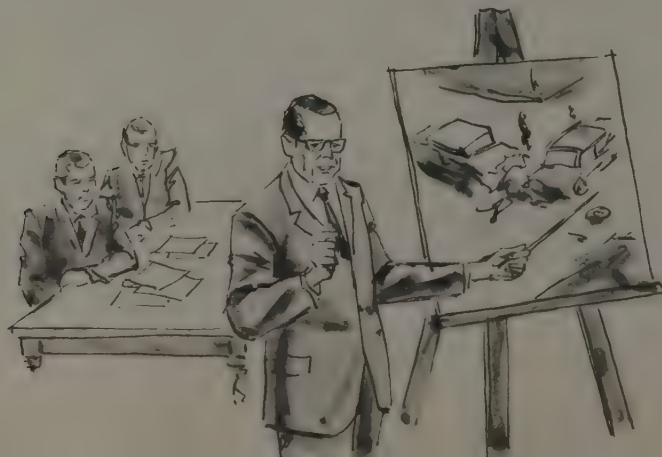
In addition to all this oral testimony most lawsuits involve some kind of *real evidence* in the form of exhibits. In a typical automobile accident case, for example, the parties might introduce in evidence photographs of the scene of the accident and of the cars involved, a map of the scene drawn to scale, X rays of the plaintiff's injuries, hospital records, and doctors' bills. In a suit for a breach

of contract (charging that a contract has been broken), copies of the contract itself, letters written by the parties, account books, canceled checks, and other documents might be introduced. In a controversy concerning the zoning of land, pictures of nearby homes that might be affected by the zoning in question, and a map showing their location, are customarily used.

Another piece of real evidence is the *view*, a carefully supervised visit to the location involved in the controversy before the court. If either party requests such a visit, and there is no objection that a substantial change has taken place in the location since the time of the accident, the jury will be sent to the scene, in custody of the court *bailiff* (court officer who keeps order), and usually with the judge attending. This is generally done only if the judge feels that a look at the scene is really necessary to allow the jury a “feel” of the site of the accident. On the other hand, in condemnation cases — involving the taking of private property for public use — the jury, or other panel which fixes the amount of compensation, will almost always visit the land which is being taken.

When the lawyers for both Bill and Sam have presented all of

Presenting evidence



the evidence, it is customary for one or both parties to make a motion for a *directed verdict*, or *summary judgment*, or *involuntary nonsuit* — all different names for a procedure by which a judge takes the case away from the jury. Usually, only the jury decides which party is correct on *factual* disputes; the judge's role is to play umpire and to tell the jury what rules of law are applicable. Occasionally, however, the evidence is so lopsided in favor of the plaintiff or the defendant that reasonable men could not properly bring in a verdict for the other side. In such cases, it is felt that it would be a waste of time for the jury to consider the controversy, since if the jury did decide in favor of the party which had the overwhelming evidence against it, the judge would be obliged to *set aside* (not accept) the verdict.

But in most cases, as in this one involving Bill and Sam, the judge will overrule any such motion, and the case will be submitted to the jury. First, however, the jury must be told just what are the laws which affect the case, and the lawyers for both sides are given an opportunity to argue their views.

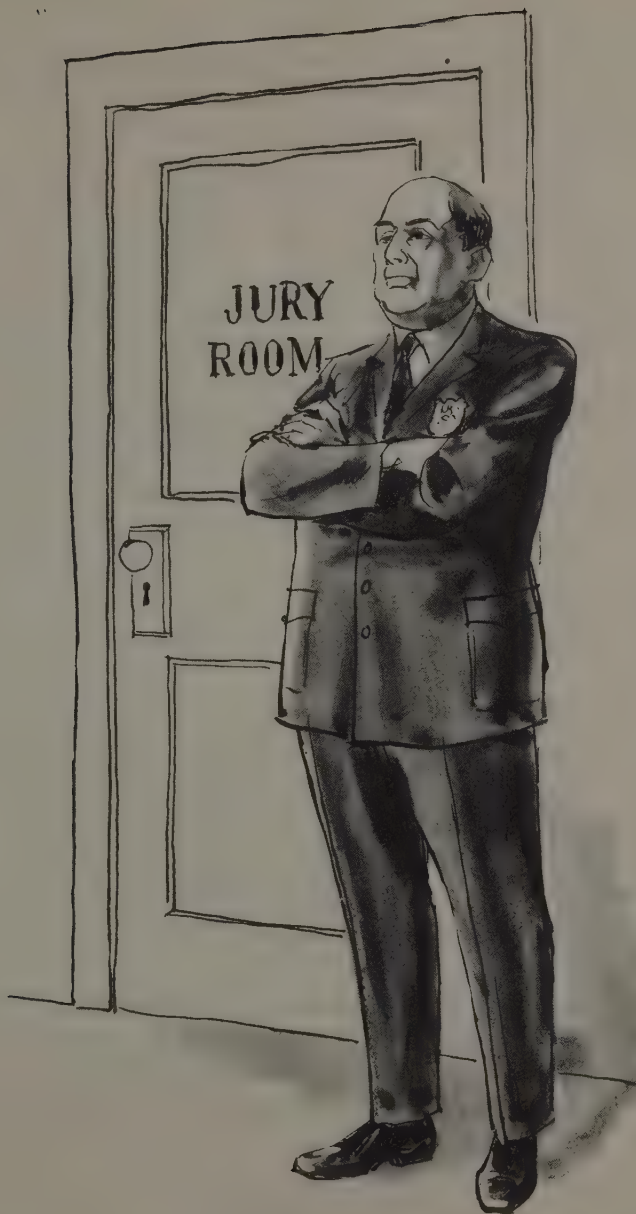
The rules of law that pertain to the case are given to the jury by the judge in his *instructions*, or *charge*. Before the charge, the lawyers and the judge retire to the judge's office to decide what the charge would consist of. Usually, the lawyer for the plaintiff gives the judge typewritten instructions which he feels properly explain the law to the jury. The lawyer for the defendant does likewise. Each lawyer can present arguments in favor of the instructions he submits, and against those submitted by his adversary. In the final analysis, however, it is the judge who decides. He usually agrees to give some of the instructions submitted, refuses to give others, makes changes in still others, and he may write some instructions himself.

When this work is finished, the judge and lawyers return to the courtroom, and the jurors return to the jury box. In federal courts, and in some state courts, ^{after} lawyers present their final arguments, or *summations*, before the judge reads his charge. In other states, the summations come after the charge. In either case, the summation is the lawyer's summary to the jury of the facts shown by the evidence, and how the facts fit into the rules of law set out in the judge's charge. Some attorneys think this is the most important part of the case. How a lawyer presents his argument to the jury depends on the type of case involved and on the personality of the attorney. Some arguments are very emotional; some are very calm and matter-of-fact.

In most states, the party having the burden of proof — in this case, Bill, the plaintiff — has the right to open and close. This means that his lawyer is the first to present his summation, followed by the other side's attorney. Then the lawyer who opened the argument has an opportunity to come back again and have the last word.

Now it is time for the jurors to retire from the courtroom, and enter the strictly guarded privacy of the jury room. Their first task is to elect a *foreman* — in some states the foreman may be the first juror chosen — whose job is to preside over the jury's deliberations. Then the jurors start going over the evidence which has been presented to them, seeing how it ties in with the rules of law laid down in the judge's charge.

In most states, the verdict of a jury must be unanimous; in some, a decision by a certain majority of the jury is binding. Sometimes the jury returns with a verdict in a matter of minutes. Sometimes it takes many hours. Sometimes the jurors have to halt their deliberations for the day, and come back the following morning.



Sometimes they become convinced that they can never reach an agreement. When this happens, it is called a *hung jury*. When the judge is thoroughly convinced that further deliberation will not produce agreement, he declares a *mistrial*, sends the jury home, and sets a new trial date. At that time, the case will be heard from the beginning by a brand new jury.

Usually, as in the trial involving Bill and Sam, a verdict is reached. [The foreman hands the jury's written verdict to the judge or clerk, who reads it to the eagerly awaiting parties and their attorneys. That is generally the end of the jury's function in the case, ~~although there may be a motion to poll the jury, ask each member if he agreed with the verdict, and in a very few cases there may be questions by the losing party about what went on in the jury room when the jurors were working toward a decision.~~

The jury's verdict, however, is not the last word. The losing side very often, almost as a matter of routine, moves to set aside the verdict and to grant a new trial. The grounds for such a motion vary; usually several are cited. If the verdict is for a very large payment, the defendant will move to set it aside as shockingly excessive. If it is for a very modest amount, the plaintiff may ask to have it set aside as inadequate as a matter of law. There may be a general objection that the verdict of the jury is contrary to the law and the evidence, or without any credible evidence to support it. There may be an objection on the ground that the judge gave erroneous instructions to the jury, or made a serious mistake in admitting or excluding certain evidence.

The judge may rule right away on the motion to set aside the verdict, or he may ask the lawyers to come back at some future date to argue the motion. Sometimes the judge will want to have all, or some, of the evidence transcribed by the court reporter so

that he can study it before making a decision. He may also ask the lawyers to file *briefs* — written arguments stating the reasons why the verdict should be set aside or left to stand, supported by citations of decided cases and other authorities.

If the trial court judge decides a serious and prejudicial error was made, he will set aside the verdict and order a new trial, or in an occasional case, he will render final judgment in favor of the party who lost out at the hands of the jury. Occasionally, a trial court verdict may be set aside because of important evidence discovered after the verdict, but this is rarely allowed.

In the majority of cases, ^{the judge} ~~the judge overrules the motion to set aside the verdict and enters an order~~ rendering the court's final judgment in accordance with the verdict of the jury. That is the end of the case, as far as the trial court is concerned.

KINDS OF COURTS

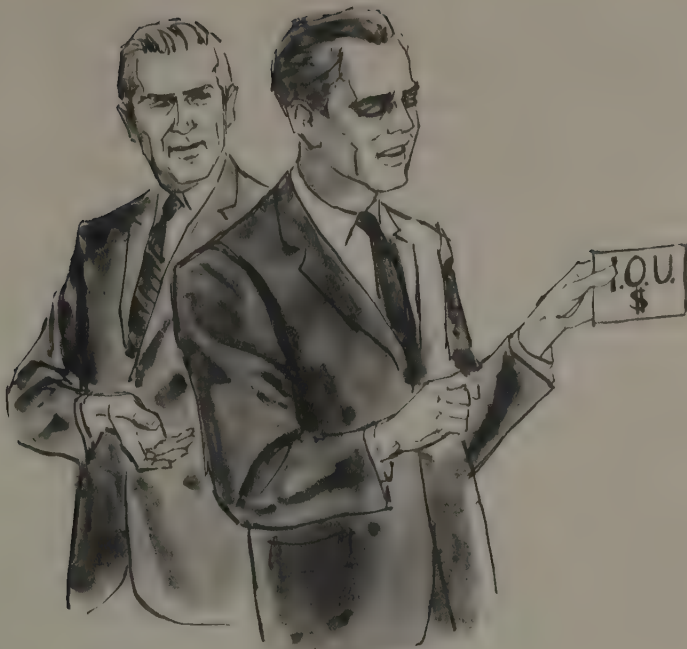
The trial of Bill Barnes versus Sam Simpson was held in one of the many kinds of courts in America. Actually, the United States has a bewildering variety of courts. This is because we have a federal system of government. Each of the fifty states has its own government, including a judicial branch, set up as that state thinks best suits its own conditions. And superimposed on the many state systems is the federal judicial system, consisting of the Supreme Court of the United States; eleven United States courts of appeals, each having jurisdiction over several states; one or more United States district courts in each state; and several specialized federal courts.

Courts are generally classified by their jurisdiction over the sub-

ject matter of disputes — that is, what kind of judicial business they are empowered by law to handle.

Our body of law is divided into two main categories — *criminal* and *civil*. The rules of criminal law tell under what circumstances, and to what extent, a person can be punished for committing a crime — an offense against the community as a whole, such as murder, theft (stealing a person's possessions), or burglary (breaking into another's dwelling with intent to steal). The rules of civil, or noncriminal, law tell what consequences follow from violating some private interest of another person, such as refusal to live up to the terms of an agreement, or injuring another's person or property through negligent conduct. Some of our courts have jurisdiction over only criminal cases. Some have only civil jurisdiction. And some have both.





On the civil side, controversies are divided into two main groups, depending on the type of remedy which is sought. A *legal* controversy is usually a suit in which one person seeks to obtain a judgment to the effect that another person owes him a certain number of dollars. In an *equitable* controversy, something different is sought — perhaps an *injunction* (a court order directing the other party to do, or refrain from doing, something) or a revision or interpretation of a contract. Most civil courts of general jurisdiction can grant both legal and equitable relief. Formerly, two completely separate systems of courts existed in some places to provide these different types of remedy.

The amount of money involved in a controversy often plays a part in determining what court has the power to hear it. *Small-claims* courts, for example, usually cannot grant judgments for more than a specified amount, such as \$3,000, while higher courts can hear cases involving any sum. Suits between citizens of different states generally will be heard in federal courts only if the amount in controversy exceeds \$10,000.

To be heard in a federal court, a case must also be between citizens of different states, or must involve some question of federal law, or must have the federal government as one of the parties.

The business of courts is also divided into *original* and *appellate* jurisdiction. When a court is said to have original jurisdiction over a controversy, it means that the controversy can be started in that particular court. When a court has appellate jurisdiction, that particular court can consider the matter only after a lower court has already made a decision. The appellate court is asked to review it.

For example, the United States district courts have only original jurisdiction. They hear only cases — both civil and criminal — which start in those courts. On the next step up the federal judicial ladder are the United States courts of appeals. They have only appellate jurisdiction — power to review and to either approve or reverse decisions made earlier by the United States district courts, or by certain federal administrative agencies. At the peak of the judicial system is the United States Supreme Court, whose business is almost all appellate — reviewing decisions of the United States courts of appeals, of the highest courts of the fifty states, and in a few instances, of special district courts. The Supreme Court also has some rarely exercised original jurisdiction; it may, for example, hear suits between two states, or suits involving foreign ambassadors.

Similarly, on the state level, the highest court of the state — usually, but not always, called the state supreme court — spends most of its time exercising its appellate jurisdiction. Occasionally, however, it entertains a suit involving original jurisdiction. One example would be a *habeas corpus* proceeding to determine the legality of a person's imprisonment. (Habeas corpus — which means “you have the body” — is a writ which commands an official who is holding a person to bring that person before the court to see if he is being legally detained.) Other examples include *mandamus* proceedings, which determine if some public official should be compelled to perform certain acts; or prohibition proceedings, to determine if a judge or other officer should be prevented from taking certain actions.

Farther down in the judicial system of the states are the trial courts, whose business mainly involves the exercise of original jurisdiction. Many of these courts, however, also have appellate jurisdiction — power to review the judgments of the small-claims courts and other *inferior* courts at the bottom of the judicial ladder.

Now let us take a closer look at the different levels of courts.

INFERIOR COURTS

The largest number of courts are rarely given attention in the newspapers, and are never seen by most people. Yet, in many ways these *inferior* courts are just as important as those higher up the judicial scale, because they give the greatest number of people their

only contact with our judicial system. Inferior courts have many different names: county court, justice of the peace court, municipal court, civil and police justice court. Let us look at the simplest example, in a typical rural American county, whose lowest court is called the county court.

This court has original jurisdiction only. There is no lower court from which to hear appeals. It has both criminal and civil jurisdiction. On the civil side, it has legal jurisdiction only: it can render a judgment for payment of a sum of money, but it has no jurisdiction to grant an equitable remedy, such as an injunction.

Lawsuits can be brought in the county court only to recover a limited amount of money. A typical limit on the size of judgment which such a court may render is \$3,000.

On the criminal side, the county court's jurisdiction is limited, too. It can find an accused person guilty or innocent of a charge of misdemeanor — a lesser crime usually permitting punishment of not more than a year in jail, such as a traffic offense, petty larceny, or being disorderly in public. The county court will also hold hearings on felonies — more serious crimes, such as murder, arson (setting fire to buildings), and robbery (taking from a person with threat of violence). But these hearings do not determine whether the defendant is innocent or guilty. The so-called *preliminary hearing* in the county court is held only to decide whether or not there is sufficient evidence that a crime has been committed, and that the defendant committed it, to justify holding him for possible indictment.

A criminal prosecution usually begins with the issuance of a *warrant*, a formal accusation of crime, by a judicial officer usually known as a justice of the peace. For some offenses, such as traffic violations, a warrant is not issued, and the prosecution starts with

the issuance of a summons, which the arresting policeman can issue without the intervention of the justice of the peace.

In either case, the warrant or summons states the offense that the accused is charged with, and tells him on what date and at what time he is required to appear in the county court to answer the charge.

At that time, the defendant appears in court and waits for his case to be called by the court clerk. When his case is called, the defendant has a chance to plead guilty or not guilty. If he declares he is innocent, the police officer, and perhaps other witnesses, will tell the judge what happened. The defendant can testify himself, and can also call other witnesses if he wishes. At the end of the testimony in a misdemeanor case, the judge — there is usually no jury in the inferior court — will decide whether the defendant is guilty as charged, or guilty of some lesser offense, or innocent. If the defendant is convicted, the judge decides how large a fine, or how long a jail sentence, will be the punishment.

If the defendant feels that he was convicted unfairly, or that the imposed sentence was too harsh, he can appeal his conviction to the next higher court. Usually such an appeal is available as a matter of right, upon payment of certain court costs. In the higher court, unlike the county court, the accused person may, if he wishes, have his case decided by a jury rather than by a judge. The case on appeal is heard *de novo* — from the start — as if the county court trial had never taken place.

In addition to hearing criminal cases, the county court disposes of a large volume of civil controversies. Here, as in criminal cases, the procedure in the county court is much more informal than the procedure in higher courts. This is because of the tremendous number of cases that must be heard each week, the relative sim-

plicity of the issues presented at this low level, and the fact that many of the people who appear there are not represented by lawyers.

The formal pleadings that characterize a lawsuit in a court of general jurisdiction generally are not found in the county court. A suit in county court is usually started by the judge or clerk issuing a paper called a *civil warrant* or a *summons*, which simply tells the defendant what type of case it is (for example, the civil warrant may say "breach of contract" or "personal injury"), and on what date and at what time the matter will be heard by the court. When that time comes, the case — and perhaps dozens of others — will be listed on the court's docket. When court convenes, the docket will be called by the clerk of the court. If, when a party's name is called, neither he nor his lawyer is present to answer, the judge will usually render judgment in favor of the other party, without a full hearing of the matter. This is called *judgment by default*, and is permitted because it is felt that one who does not show up to contest a lawsuit against him must feel that he has no legitimate defense to the claim of the other party.

If both parties, or their attorneys, are present in court, and are still in disagreement, the judge will conduct a hearing to determine who is right. If the case is very simple, and can be decided in a few minutes, the judge may hear the witnesses and render his decision before calling the next case on the docket. More often, the parties at the docket-calling will ask to have an hour or two set aside at some later date for the judge to hear the controversy. When that day comes, the judge, usually sitting without a jury, will hear the testimony of witnesses for both sides, examine any documents or other exhibits that may be introduced in evidence, and hear the arguments of the parties or their counsel, before rendering his de-

cision. If the losing party is dissatisfied with the result, he usually has the right to appeal to the next higher court for a retrial, unless the judgment is for a very small sum, in which case the county court judgment may be final.

This kind of generalized inferior court, with all types of minor civil and criminal jurisdiction, is usually found in rural areas. In cities, the tendency is for courts to be more specialized. There may be one inferior court with nothing but criminal jurisdiction — the trial of misdemeanor cases, and the conducting of preliminary hearings in felony cases. Such a court might be known as the police court, or the magistrate's court, or by some other name.

In many cities, all misdemeanors involving violations of the motor vehicle laws are tried in an even more specialized court, usually called the traffic court. Some traffic courts do far more than



just sit in judgment to determine if drivers are guilty or innocent of violating the traffic laws. Some of them conduct safe driving schools, which persons found guilty of traffic violations must attend, instead of, or in addition to, punishment. In some states, a boy or girl who has qualified for a driver's license for the first time is actually given the license during a regular session of the traffic court, where the new driver first hears a lecture by the judge on the importance of highway safety.

Another very specialized court is the juvenile court, which hears

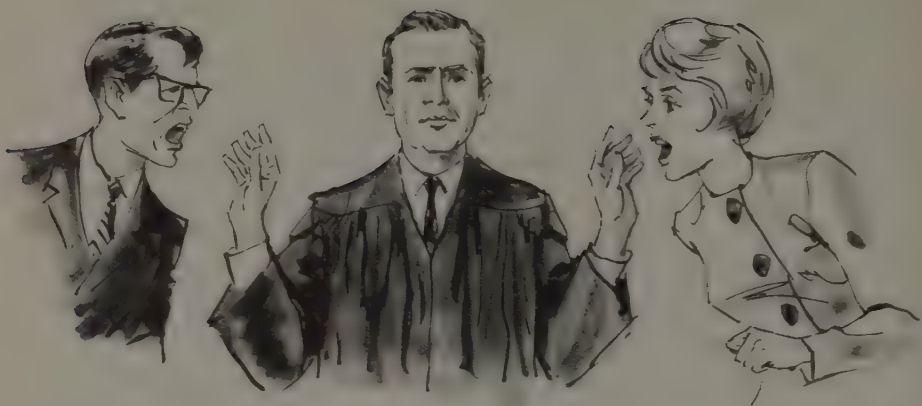


offenses involving minors. Although offenses against the criminal laws of the state are involved, a juvenile court does not really find a minor guilty or innocent of a crime, as a police court or county court would do in the case of an adult offender. Instead, the court decides whether, based on the facts presented, the minor should be adjudged a juvenile delinquent (a person under 18 or 21 who shows antisocial behavior).

Juvenile courts have a great deal of flexibility in handling young people. A youth adjudged to be a juvenile delinquent may be sent to a special institution for young offenders, or he may be freed under the close supervision of a juvenile probation officer. The idea is not to determine whether the juvenile offender has committed a crime, or to punish him if he is guilty, but rather to find some way to rehabilitate him, and to keep his name free of the stigma of having been convicted as a criminal.

The juvenile court does not have to treat a young offender as a juvenile, however. In the case where a juvenile is suspected of murder, unless he were very young, he would be treated in court as an adult. Or if the judge feels that the accused is a hardened offender, and not likely to benefit from the lenient treatment available for juveniles, the court may decide to put him on trial as if he were an adult. If the juvenile court judge makes this decision, he may find the offender guilty of a misdemeanor, just as he would an adult, or, in the case of an offense classified as a felony, the judge may order the offender held for action by the grand jury, in exactly the way an adult charged with a felony is handled.

Some of these courts are called juvenile and domestic relations courts. This means that, in addition to handling cases involving offenses committed by youngsters, they also hear disputes between parent and child, or husband and wife. A large part of the work of



such a court may be bookkeeping, since it very often receives sums of money from a husband, which the court has required him to pay for support of his family.

TRIAL COURTS

One step above the inferior courts are the trial courts, sometimes known as courts of general jurisdiction.

Such a court might be called, for example, the Circuit Court of Jefferson County, the District Court for the Ninth Judicial District, the Corporation Court of the City of Madison, the Court of Common Pleas, or any one of a dozen different names.

The simplest example of a court of this nature is the court of general jurisdiction in a rural area, which hears all kinds of cases. Typically, such a court would have both civil and criminal, orig-

inal and appellate jurisdiction. It would have power to hear cases involving prosecutions for the commission of crimes, and private suits between individuals. It would also have power to hear not only suits originating in that court but also those appealed from a prior hearing in an inferior court.

First, let us consider the appellate jurisdiction of the court of general jurisdiction, which we will call the circuit court.

In both criminal and civil cases, the party which loses in the county court usually has the right to appeal the decision to the circuit court. There, his trial will be held as if the lower court proceeding had never taken place.

The circuit court may also have a different kind of appellate jurisdiction — power to hear appeals from certain state or local administrative agencies. For example, most urban localities have boards of zoning appeals. These boards have authority to permit, under certain circumstances, the owner of land or a building to use it for a purpose not permitted under the express terms of the local zoning ordinance. The decision of such a board is not absolutely final; there is usually a right to appeal the board's decision to a court. In hearing such an appeal, the circuit court does not, as in the case of an appeal from a county court, hear the controversy from the start. It usually has power to reverse the decision of the board only if that decision is contrary to the law or without any evidence to support it.

As we have said, the circuit court also has original jurisdiction. On the criminal side, the circuit court has power to hear and determine cases involving felonies, the most serious crimes. The usual procedure is first to hold a preliminary hearing in the county court, which either dismisses the case or sends it on to the county grand jury, an arm of the circuit court.

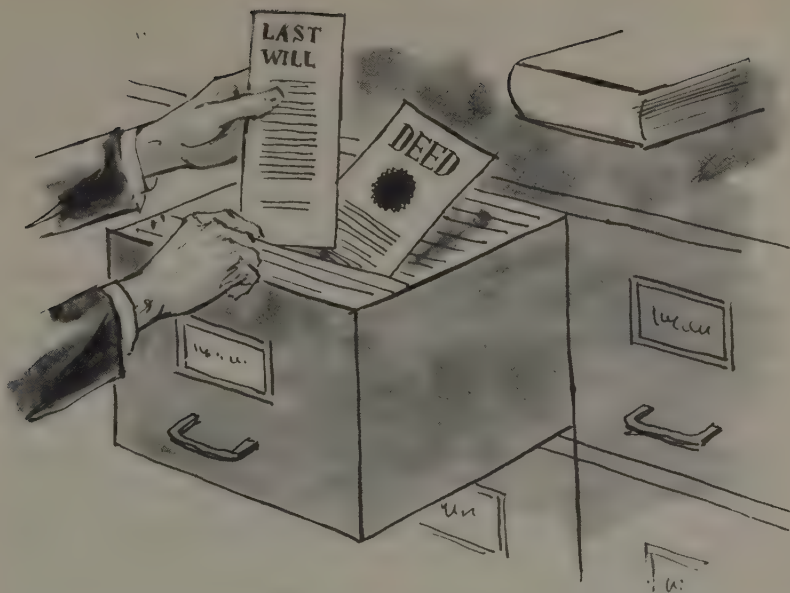
The grand jury consists of a number of citizens who, meeting in a session closed to the press and public, hear evidence presented by the prosecutor. Then, on the basis of the evidence presented by the prosecutor, the grand jury decides whether the crime charged has been committed. If the grand jury decides that the prosecutor is right, it *indicts* the accused person by issuing a paper called an *indictment*, or *true bill*, which usually is prepared by the prosecutor but which has no legal effect until approved by the grand jurors. This paper is the final formal charge in a felony case on which the accused stands trial. If the grand jury feels that the prosecutor has not presented enough evidence to justify issuing an indictment, it usually sends back the paper prepared by the prosecutor marked "not a true bill," and that is generally the end of the prosecution.

But if the defendant is indicted by the grand jury, the indictment is read to him in open court, and he has an opportunity to plead guilty or not guilty. This stage of the trial is the *arraignment*. Then the trial proceeds.

The civil part of the original jurisdiction of the circuit court allows it to hear suits for the collection of a sum of money in any amount. Most of these suits arise from automobile accidents, and involve the claim of the plaintiff that the defendant's failure to use reasonable care while driving his car caused personal injury or property damage, or both, to the plaintiff.

Another type of civil action for money damages is one charging breach of contract—the other party's failure to live up to the terms of a legally binding agreement.

In addition to these legal remedies, as suits to recover a sum of money are called, the circuit court has the power to grant equitable remedies, such as an injunction suit, in which the complainant seeks to have the court order the defendant to do, or refrain from



doing, a certain act. Sometimes this is also called a *chancery* jurisdiction. A divorce suit is another example of equitable, or chancery, jurisdiction, and so is a suit whose purpose is to get a binding, authoritative interpretation of the meaning of a contract, a deed, a will, a law, or some other document.

Sometimes a *mixed* action is filed. In this case, one party wants not only an interpretation of the contract but also, perhaps, an injunction against violating it, and/or the award of a sum of money as damages.

Besides the court's purely judicial work of deciding legal controversies, a court of general jurisdiction often has a variety of administrative business. In the clerk's office, land deeds, certain kinds of contracts, abstracts of judgments (summaries containing trial information such as names of parties and judgments rendered), and other legal documents are recorded or filed and care-

fully indexed so that any citizen who is looking for legal records can find them. The administration of the estates of deceased persons is supervised in the clerk's office, and wills are *probated*, or proved to be genuine.

The judge of the circuit court may also have power to appoint certain public officials, such as justices of the peace, inferior court judges, members of local zoning boards, and others. The court may have the responsibility for determining what persons will be permitted to carry concealed weapons.

In urban areas, the setup of the circuit court may be just as simple as it is in rural areas, although the single court of general jurisdiction may have two or three judges, or more, because the heavy population of the area produces too much legal business for one judge to handle.

More typically, a city will have a number of courts, each somewhat specialized, to do the work which a single circuit court takes care of in a rural area. Although it is impossible to describe all the various combinations of jurisdictions in detail, we may use the example of one fairly typical city.

The law and equity court in this city has no criminal jurisdiction, but as the name suggests, has power to determine civil controversies involving both legal and equitable remedies. This court also has power to hear appeals from civil case decisions made in two inferior small claims courts, called the civil justice courts. The law and equity court also has power to hear appeals from the city's board of zoning appeals. This court has three judges, only one of whom sits in a particular case. With the judges of the other trial courts of the city, these three judges choose men to serve as judges of the inferior courts.

The chancery court has jurisdiction to hear only equity, or chan-

cery, cases. This part of its jurisdiction is about the same as the equity jurisdiction of the law and equity court. The chancery court is also the court of record and probate for most of the city. It handles the recording and filing of deeds, security agreements, and other documents, the proving of wills, and the administration of estates.

The hustings court is primarily a criminal court, hearing felony cases and appeals in misdemeanor cases from decisions made in the police court, the traffic court, and the juvenile and domestic relations court. The hustings court, which has three judges, also hears controversies involving tax correction suits and the taking of private property for public use. It has power to name justices of the peace and citizen members of certain city boards.

Finally, there is a hustings court, part II, with two judges, which differs from its sister courts in that it is not specialized at all. It hears all kinds of civil cases, both legal and equitable. It also hears felony cases and appeals from misdemeanor convictions in an inferior court, called police court, part II. It serves as the court of record and probate for part of the city.

APPELLATE COURTS

Above the level of the trial courts are the appellate courts. With rare exceptions, they have no original jurisdiction, and hear only appeals from decisions of the trial courts.

In the federal court system, there are two levels of appellate courts. When a party to an action decided in a district court is aggrieved by the result, and feels that the judge of the district court

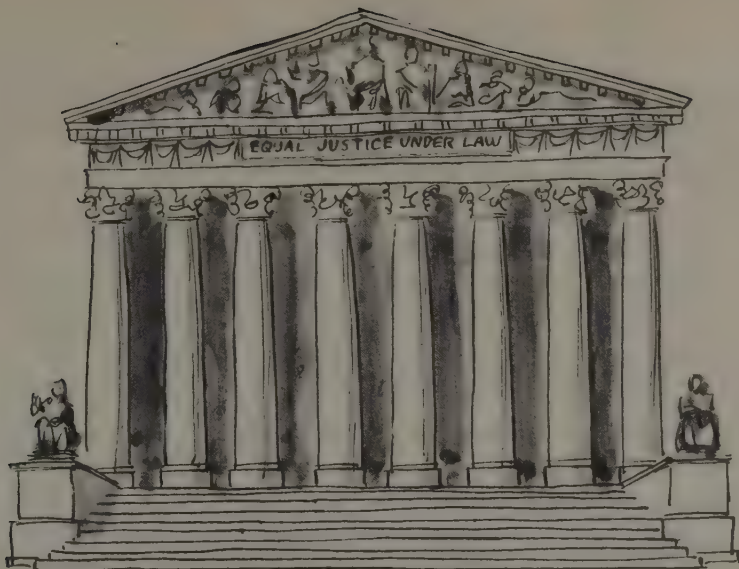
committed one or more serious errors in his handling of the case, the aggrieved party has an absolute right to appeal the decision to the United States Court of Appeals, in the territory in which the district court has jurisdiction.

The court of appeals has a number of judges. Sometimes all of them hear an appeal, in which case it is said that the court sits *en banc*. Usually, a panel of three of the judges hears a case, and often, because of the press of business, one or two judges from district courts within the judicial circuit sit with one or two court of appeals judges to hear the case.

A party who is dissatisfied with a decision of a United States court of appeals has a further chance to get his case decided again — by appealing to the United States Supreme Court. The Supreme Court, which holds its sessions in Washington, D.C., consists of nine justices. Each year they are able to decide only a small fraction of the cases that are presented to them, so the chance of getting a reversal of a decision there is rather slim. Because of its vast load of business, the Supreme Court is able to hear full arguments on only the most important cases. But each appeal is carefully considered when the briefs and other papers are filed. If at least four

Usually, a panel of three judges hears a case.





members of the Court feel that the case should be fully argued, the Court will hear the appeal.

In some types of cases, the United States Supreme Court will hear an appeal directly from a United States district court, without first having had the case passed on by a court of appeals.

The state appellate system varies a great deal from state to state. In some states, there are two or more intermediate appellate courts, which hear appeals from trial courts, and whose decisions, in turn, can be appealed to the state's highest court. In this respect, the intermediate appellate court system is very much like the federal appellate system.

In other states, there is only one appellate court, the state supreme court. Decisions of trial courts are appealed directly to the state supreme court.

Often a state court system, unlike the federal system, does not

allow an appeal from a trial court to the appellate court as a matter of right. Generally, there is a sort of screening process. The appealing party must first present his case to one or more members of the appellate court, who, if they think the case is clearly without merit, will refuse to allow the appeal to be heard by the full court. On the other hand, if it appears that the appealing party has a good point or two in his favor, the case will be referred to the full appellate court for further argument, and finally a decision.

The decision of a state supreme court is not necessarily the last word, however. If a federal question is involved — such as the interpretation of a law passed by Congress, or of some provision of the United States Constitution — the case may be reviewed by the United States Supreme Court. But, as in the case of appeals from United States courts of appeals, the number of appeals which the Supreme Court will hear from state courts is very limited. Therefore, as a practical matter, the state supreme court usually does have the last word.

CRIMINAL PROCEDURE

A criminal trial is very much like a civil trial. The prosecution — sometimes referred to as *the State*, or *the People* — has the burden of proof. Therefore, it presents its witnesses first, and has the right to call rebuttal witnesses after the defendant has stated his evidence. Examination and cross-examination of the witnesses, instruction of the jury, and arguments proceed as in a civil case. The primary difference is that there are usually no elaborate pretrial written pleadings, as in a civil controversy.

In a criminal trial, the accused is formally told of the charge against him in the indictment delivered by the grand jury or in the information produced by the prosecutor, which has the same legal effect. This is read to the accused at the arraignment. There may be written pretrial motions — usually made by the attorney for the defendant — to suppress confessions or other evidence on the ground that it was not lawfully obtained; to require the prosecution to give the defense certain information in its possession; and others. Generally the courts are less likely to allow extensive discovery in criminal than in civil cases.

The biggest difference between a civil trial and a criminal trial is in the burden of proof. In a noncriminal case, the plaintiff only has to prove his case “by a preponderance of the evidence” — that is, he must prove it is *slightly* more likely that the defendant was at fault than that he was not. As it is sometimes stated, the civil plain-

Cross-examination



tiff needs only to convince the jury that it is 51 percent probable that he was in the right. In a criminal case, on the other hand, the prosecution has the burden of proving the defendant was guilty “beyond a reasonable doubt” — that is, the State must prove that it was *very much* more likely that the accused committed the crime than that he did not. Stated another way, in a criminal trial — unlike a civil trial — there is always a presumption that the accused is innocent until proven guilty. The prosecution need not prove its case beyond *any* doubt whatsoever; but it must prove its case beyond a *reasonable* doubt.

An important procedural difference between criminal and non-criminal cases is that the defendant cannot be compelled to testify in a criminal case. If he fails to take the witness stand the prosecutor is forbidden to make any comment to the jury about that failure. Often it is the best strategy to keep the defendant from testifying. He may be unable to withstand a vigorous cross-examination by the prosecutor, and his appearance on the stand may entitle the prosecution to introduce evidence of the defendant’s prior criminal record, if he has one, which may be very damaging.

In a civil case, the jury fixes the amount of damages, if any, which the plaintiff is entitled to recover. In criminal cases, in some states the jury fixes the amount of fine or imprisonment imposed on a defendant found guilty. In other states, and in the federal courts, the jury’s only function in a criminal trial is to decide whether the accused is guilty or not guilty. The judge decides what punishment will be imposed.

For many trials, there is no jury. In both civil and criminal cases, both sides will often *waive* a jury (agree not to have one), and will agree that all issues of fact, as well as questions of law, will be decided by the trial judge.

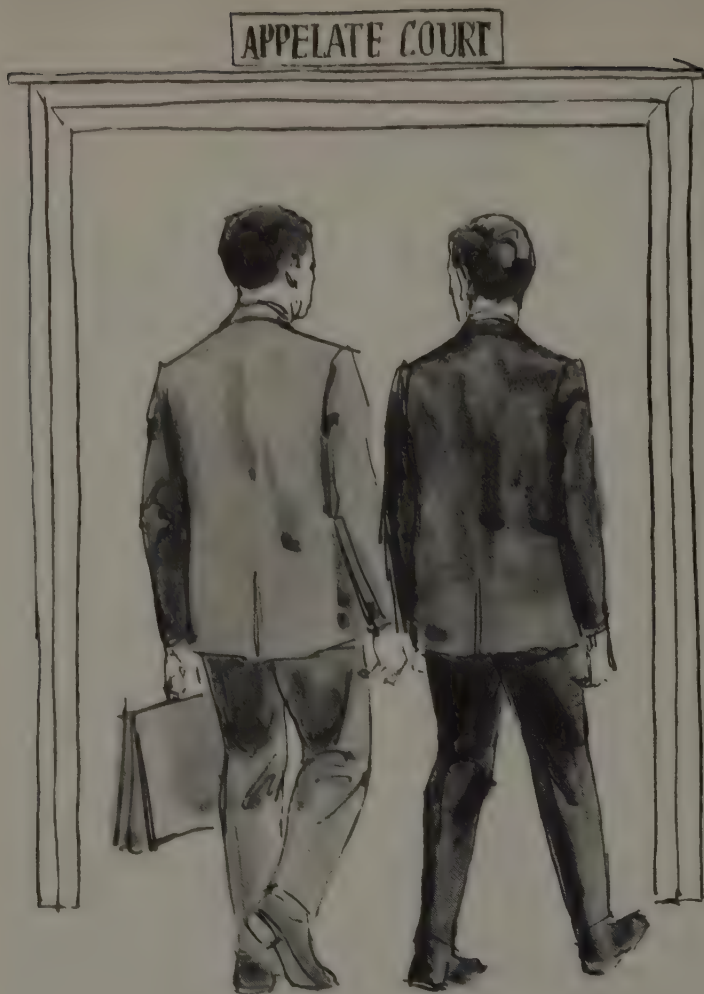
APPELLATE PROCEDURE

The appeal procedure in our judicial system usually starts only when there has been a *final* judgment in the trial court. Occasionally, however, some systems, under certain circumstances, allow an appeal from an *interlocutory*, or preliminary, ruling of the trial judge.

The function of the appellate courts is only to determine whether or not a serious prejudicial (injurious) error has been committed by the trial judge. Whether the jury was right or wrong in its verdict is of no concern to the judges of the court hearing an appeal, except in the very rare case when it can be said that there was no believable evidence on which the jury's verdict could be based. Even then, the question on appeal is technically not whether the jury erred, but whether the trial judge erred in failing to set the verdict aside on the ground that it had no credible evidence to support it.

There are many other actions of the trial court on which an appeal may be based. They include refusal to allow one party's lawyers to ask certain questions of prospective jurors at the time the jury was being selected; allowing or refusing certain crucial evidence to be heard, or refusing to do so; refusal to grant a mistrial when some evidence or argument was heard which should have been excluded; overruling a motion for a directed verdict for one side or the other; the action of the trial judge in refusing to grant, in granting, or in amending some part of the court's instructions to the jury; limiting or failing to limit one party's argument to the jury; and setting aside or refusing to set aside the verdict returned by the jury.

Usually the first step on appeal is filing with the trial court a



notice of appeal and a list of the mistakes which the *appellant* — the party who is appealing — thinks that the trial judge made. The next step is preparing a transcript of the evidence. The stenographer who made shorthand notes of all that was said during the trial

now turns to his typewriter and translates the testimony and argument into writing.

The next step for the appellant is preparing a *brief* for the appellate court. This is a written statement which describes the procedure in the trial court, summarizes the evidence presented there, lists the errors allegedly made by the trial court and the legal questions which they raise, and presents argument — supported by decisions in earlier, similar cases — which says why the judgment of the trial court should be reversed.

This brief is filed with the appellate court. The party against whom the appeal is sought — the *appellee* — has a certain number of days in which to file his opposing brief.

In the federal system, and in some state systems, an appeal is allowed as a matter of right. In other systems, there is a screening process, in which one or more members of the appellate court conduct a sort of preliminary hearing to determine if there appears to be enough merit in the appellant's argument to justify setting the case down for full argument by both sides before the entire appellate court.

Most appellate courts require the record in the trial court, and the briefs filed by the parties' lawyers, to be printed instead of typewritten. This, of course, substantially delays the appeal, and adds to its expense. Under certain circumstances — such as the poverty of a defendant — printing is not required.

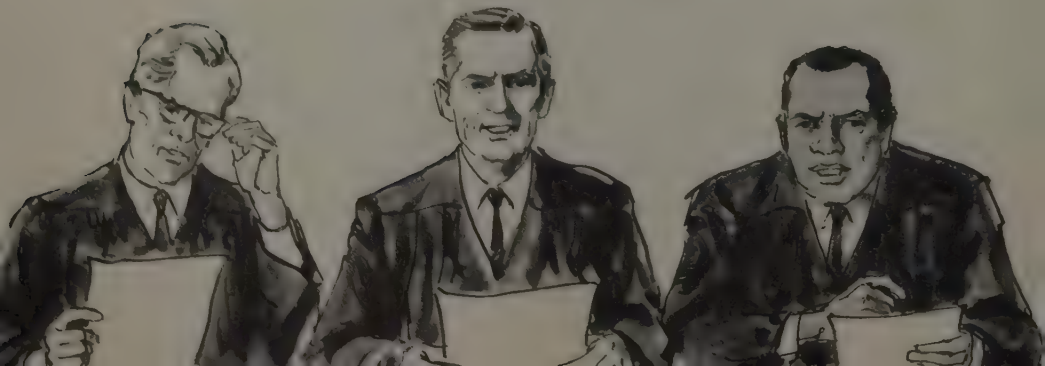
When a case comes on for full argument before the appellate court, the scene is much different than it was in the trial court. There is no jury. No witnesses appear to testify. No exhibits can be introduced. The parties must stand or fall on the evidence which has already been presented in the trial court. There is not just a single judge, but three, five, seven, or nine judges. All, pre-

sumably, have read the record and the briefs before the oral argument starts. Thus, there is no need for the lawyers to repeat orally what they have already said in writing. Their argument on appeal will be confined to mentioning the highlights of the arguments set forth in the printed briefs, and answering the questions fired at them by the appellate judges.

When the arguments, conducted under strict time limitations, are concluded, the appellate judges retire to their chambers to decide which party will win. When the decision is made, the presiding officer of the court, usually called the chief justice, assigns to himself or some other court member the task of writing the court's opinion. Usually there is a delay of several weeks between the day of argument and decision and the day on which the court's final decision is announced.

The judge who has the job of writing an opinion, generally aided by a young lawyer who serves as his law clerk, usually circulates a draft of his opinion to his brother judges well before decision day. Often changes are made following the suggestions of one of the other judges. Some judges may very strongly disagree with the

Dissenting opinion, opinion, and concurring opinion



result decided on by a majority of the court, or with the reasoning set out in the majority opinion. Those who disagree with the result can write and file *dissenting* opinions. Those who agree with the result, but are not willing to go along with the reasoning of the majority opinion, may file *concurring* opinions.

On decision day, the opinions — majority, dissenting, and concurring — are released to the parties to the suit, and to the general public. Copies are sent to the publishing companies which print books made up of the opinions of appellate courts (and of some trial courts, too). These opinions are carefully indexed and closely studied by lawyers and judges, for they provide precedents by which similar cases can be decided in the future.

As we have said, some states have a single appellate court. In that case, decision day is the end of the judicial road, except in cases where the appellate court might grant a rehearing, or in a rare case where a question of federal law is involved, serious enough to merit further review by the United States Supreme Court.

In other states, the first appellate court decision day is only the initial round. The party who loses at this stage has a further chance of having that decision reversed by the state's highest court, with a possibility of rehearing or further appeal to Washington.

THE JURY

Trial by jury is the usual method of resolving major legal controversies in the United States. In England, however, from which we inherited the institution of the jury, trial by jury has been largely

abolished, except in criminal cases. The same is true in other countries.

Twelve jurors serve in both criminal and civil cases in United State federal courts, but the parties can agree on a lesser number in civil cases. In some states, less than twelve jurors may hear misdemeanor or civil cases.

In a modern jury trial, a prospective juror who has knowledge of the facts involved in the case will be dismissed as unfit to serve. The idea is that a juror should gain his knowledge of the controversy exclusively from the evidence presented in open court. This situation was exactly opposite in early England. At that time, men were chosen as jurors because they had special knowledge of the issue to be decided. But by the sixteenth century, it had become well established that the jury was not a body of witnesses, but a body of judges, and that the jury's verdict should be based entirely on the evidence presented at the trial.

At one time, the jury was asked to render *special verdicts* — specific questions were asked of the jury and specific answers were given — for example, did the defendant sign this contract? Today, the jury is usually asked instead to render a *general verdict* — that the defendant is guilty (or innocent) of the crime charged, or that the defendant is required (or not required) to pay a sum of money to the plaintiff. Some scholars criticize the general verdict system because it does not permit the accused to know exactly why the jury reached the decision that it did. Others support the system on the grounds that by administering a sort of rough justice, without being strictly confined to answering a series of questions, the jury does a better job of reaching a decision which is basically fair and just.

Usually, a verdict of a jury must be unanimous. If after hours of deliberation, the jurors are unable to agree, they are discharged, a



mistrial is declared, and a new trial is ordered. In a few states, a case can be decided by a specified majority of the jurors. In the federal courts, unanimity is generally required, but the parties can agree to accept a majority verdict before the trial starts.

Obviously, the jury system will not work properly unless the members of the jury are open-minded and unbiased when they take their seats in the jury box. It is the purpose of the jury selection system to assure this.

The first step is the selection of jury commissioners, citizens who, before each term of court, select a large number of other citizens living in the judicial district where the court sits. This makes up the pool of jurors for the next term of court, which probably will last several weeks. The commissioners are expected to select people who will provide a good cross section of the community, including those of all races, sexes, ages (although all over twenty-one), and occupations.

When a trial date approaches, a certain number of the prospective jurors are notified to be in court on the day of trial. Jurors will be excused from this service only for what the judge considers good cause — perhaps poor health or a pressing home situation.

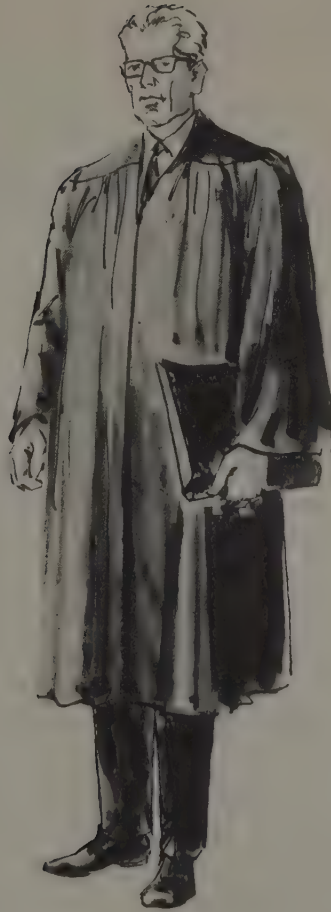
A panel is usually selected by lot from the number of jurors who show up on the trial date. This panel includes more persons than will actually sit to determine a case, because some will be excused. The next step is the “voir dire” (to speak the truth) — the questioning of the prospective jurors by the judge, and/or the lawyers, to determine if any have knowledge of the facts about the case, are related to or acquainted with one of the parties or their lawyers, or have already expressed an opinion about the merits of the case. The degree of this sort of questioning which is permitted varies widely from state to state and from court to court.

Jury service can require great sacrifice, since the pay is very little, the responsibility is great, and the actual service is often tedious and arduous. But in order for our system of justice to work, it is extremely important that the best members of the community serve diligently when they are called. The reward is satisfaction for an important job well done.

OFFICERS OF THE COURT

^a Besides jury service, there are other important jobs to be done in administering our system of justice.

The most important officer of the court is the judge. The means of selecting judges varies widely from state to state. In some they are nominated by political parties and elected like other public



The judge

officials. In some they are selected by the governor or the state legislature. In others they are selected by a non-partisan ballot. Federal judges are selected by the President, subject to approval by the Senate. Once appointed, federal judges have lifetime jobs. In the

state courts, judges usually serve for specified terms. Often recommendations of local bar associations — whose members know prospective judges best — are given great weight by appointing authorities.

Normally, a man selected to be a judge is a capable, respected practicing lawyer. However, it is rare that there is a legal requirement that he even be trained as a lawyer. A political background is often helpful, but is not always essential.

The day-to-day administration of the business of the court — receiving papers for filing, collecting money as costs, preparing dockets, assisting at the trial of cases — is the work of the clerk of courts, his deputy clerks, and other assistants. The clerk is usually elected by the people, and he chooses his staff.

Serving copies of suit papers, subpoenas requiring attendance of witnesses, the production of documents and other legal papers, and seizing and selling property to satisfy judgments rendered by the court is the work of the sheriff and his deputies. The sheriff may also be required to attend court, in person or by one of his deputies, to maintain order, although this sometimes is the duty of the bailiff. In rural counties, the sheriff is often the chief law enforcement officer as well, and, in any case, is usually elected by the people.

Another important officer is the justice of the peace, or magistrate. He issues warrants in criminal cases, and decides whether to admit a prisoner to bail, and if so, what the amount of the bail should be. Sometimes these officers are elected, and sometimes they are appointed by the judge.

In courts whose business includes the administration of estates of deceased and incompetent persons, an important officer is the commissioner of accounts, usually appointed by the judge. The commissioner requires executors, guardians, and others in similar positions of trust to account to him periodically on how they have

handled the money and any other property entrusted to their care.

The prosecutor — called the district attorney, state's attorney, commonwealth's attorney, or county solicitor — brings to trial persons charged with having committed crimes. His job is not merely to obtain convictions, but to see that justice is done. In theory at least, it is as much his responsibility to see that the innocent are not convicted as to see that the guilty are. He is usually elected.

All other attorneys are also officers of the court. Although they are employed by their clients, they owe obligations not only to them but to the court and to the community as a whole. While an attorney is expected to fight vigorously to win a case on behalf of his client, he is supposed to do it cleanly and fairly, and not try to deceive the judge, the opposing attorney, or the jury.

A person involved in either a criminal or a civil legal proceeding does not have to be represented by an attorney. He can handle his own case if he wants to. Generally, of course, he will fare a lot better if he has the help of a professionally trained person. Because of this, the courts require that if a person is charged with a serious crime, and cannot afford to hire an attorney, the state will provide him one at public expense, both at the trial and the appellate levels. The state will also provide a poor defendant with a free copy of the transcript of testimony to assist him in his appeal.

Legal aid societies also supply volunteer lawyers to help indigent people in solving some of their civil problems.

Another important officer of the court is the court reporter, a highly skilled stenographer who is sworn to record faithfully all that is said during the trial. When a question arises as to what a witness said, or when the losing party wants the evidence written up so that he can appeal, it is of crucial importance to have the testimony accurately recorded.

IN THE COURTROOM

A courtroom is a public place. Anyone who behaves himself can go to watch a trial, and it is an experience that everyone should have. An actual trial bears little resemblance to those shown on television, for there are often long hours of tedium, with the drama that underlies almost every trial subdued.



To get the most out of watching a trial, it is a good idea to find out first what the case is all about. This can often be arranged by a visit to the judge, the clerk, or one of the participating lawyers. With this sort of knowledge, the spectator can get a better idea of why a certain question is asked, why a certain objection is made, or why a certain line of questioning is suddenly abandoned.

As the trial nears its end, the spectator can often be treated to some fairly good oratory as the attorneys deliver their closing arguments. And when the jury returns to the courtroom from its deliberations in the jury room, the spectator may feel the same twinge of excitement that the participants feel when the judge looks at the jury box and asks:

"Gentlemen, have you agreed upon a verdict?"

GLOSSARY

ACTION — A lawsuit.

ADJUDICATION — The giving or pronouncement of a judgment deciding a legal controversy.

AFFIDAVIT — A written statement of facts signed and confirmed by the oath of the person making it. The affidavit must be acknowledged before and signed by a notary public or other official having authority to administer oaths.

ALLEGATION — A statement in a pleading filed by a party to a suit, stating what he expects to prove.

AMICUS CURIAE — "Friend of the court." One, not a party to a suit, who intervenes, with the court's permission, for the purpose of providing his views on how the controversy should be decided.

ANSWER — A pleading filed by the defendant which sets up a defense to the complaint, usually consisting of denial of some of the facts alleged in the complaint.

APPELLANT — The party appealing to an appellate court from a decision of a trial court. This party is sometimes called "plaintiff in error."

APPELLATE COURT — A higher court than a trial court, usually consisting of three or more judges, having jurisdiction to hear and decide appeals from trial courts, and to reverse, affirm, or modify their decisions. Our appellate courts include the United States Supreme Court, the supreme courts of the fifty states, and certain intermediate state and federal courts.

APPELLEE (ap-e-lē') — The party against whom an appeal is taken to a higher court, usually the winning party in the lower court. Sometimes called "defendant in error."

ARRAIGNMENT — In criminal procedure, the act of bringing the prisoner to the bar of the court to be identified, to hear the charge against him read, and to plead.

ARREST — The act of depriving a person of his liberty by legal authority for the purpose of holding him to answer for a criminal charge.

ATTORNEY — In the most general sense, an agent; one who is appointed by another to do some act for him, usually under authority of a document called a "power of attorney" which sets out his authority. In a more limited sense, short for "attorney-at-law," a lawyer.

BAIL — Release from custody of a person charged with crime, on his promise, supported by adequate security, that he will appear in court at a specified time. The security for this promise may be a sum of money deposited with the judicial officer who admits the prisoner to bail, or the promise of another financially responsible person, e.g., a bail bond company, to pay the specified sum if the prisoner does not appear.

BAILIFF — A court attendant whose duty it is to maintain order in the courtroom and have custody of the jury.

BRIEF — A written argument prepared by an attorney for a party to a suit, filed with the court. It usually contains an outline of the facts together with references to statutes and cases applicable to the legal issues before the court.

BURDEN OF PROOF — The necessity, imposed by law, of proving the likelihood of the existence of certain facts to the satisfaction of the court or jury, in order to win the case. In a civil

case, the plaintiff usually has the burden of proving the relevant facts "by a preponderance of the evidence." In a criminal case, the state has the burden of proving the guilt of the defendant "beyond a reasonable doubt."

CAPTION — The heading of a pleading, or other court paper, showing the name of the court, the names of the parties, and sometimes the number of the case.

CAUSE — A suit; an action; a case.

CERTIORARI (ser'shi-o-ra'rē) — A writ issued by a court directing a lower court, or some other official body, to send to it the records of a case, so that it may be reviewed.

CHANGE OF VENUE — Removal of a trial from one county or judicial district to another, usually on the ground that a fair trial cannot be had in the locality where the proceeding began.

CIRCUMSTANTIAL EVIDENCE — Indirect evidence; proof of a relevant fact not by direct evidence of the existence of that fact, but by proving the existence of circumstances which make it highly likely that the principal fact exists.

COMPLAINANT — The party who initiates a suit; the plaintiff.

COMPLAINT — The name generally given to the first pleading filed in a suit. It states facts which the party filing it (the plaintiff) relies on as entitling him to the relief he asks for.

CONDEMNATION — The exercise of the power of eminent domain; the procedure by which a government or public utility takes private property without the owner's consent, upon payment of just compensation, in order to devote the property to a public use.

CONTEMPT OF COURT — Any act tending to obstruct or hinder a court in the administration of justice, or to detract from its dignity. A direct contempt is one committed in the immedi-

- ate presence of the court. An indirect contempt is one not so committed; usually the refusal to obey an order of the court.
- COUNSEL** — A lawyer appearing on behalf of a party; a legal adviser; counselor.
- COUNTERCLAIM** — A claim filed in a suit by the defendant against the plaintiff. In substance, it is the defendant's complaint against the plaintiff.
- COURT** — An agency of the judicial branch of the government whose duty it is to resolve disputes as to the rights of persons who come before it in legal controversies. The word "court" is sometimes used as a synonym for the judge who presides over the court.
- COURT REPORTER** — A stenographer who takes down, word for word, the testimony of witnesses in a suit. When typed up, this becomes the "transcript of testimony."
- CROSS-EXAMINATION** — Questioning of a witness by counsel for the party opposing the party who called the witness.
- DAMAGES** — Compensation claimed or awarded in a suit for injury or other invasion of a legal right by another.
- DECLARATION** — The complaint in a civil suit.
- DECLARATORY JUDGMENT** — A decision rendered in a proceeding to declare the rights of the parties, without granting any specific relief. This is a relatively modern procedure adopted to make it unnecessary for the parties to wait until one had actually violated the rights of another before providing a means of determining their rights in court.
- DEMURRER** — A pleading which says that even if all the facts stated in the complaint or other pleading filed by the opposing party are true, still the opposing party, as a matter of law, is not entitled to the relief he asks for. To demur is to file a demurrer.

DE NOVO (dē nō'vō) — Anew, afresh. A *de novo* trial is a retrial, on appeal, from the start, as if the previous trial had not taken place.

DEPOSITION — The testimony of a witness taken down out of court for later use in court.

EMINENT DOMAIN — See *Condemnation*.

ENJOIN — To require or command; the act of issuing an injunction.

EXCEPTION — A lawyer's statement, during the course of a trial, that he disagrees with some ruling or action of the court, done over his objection. By "excepting" at the time the court acts, the lawyer "saves the point" as a ground for a possible appeal. If he fails to "except" to the ruling of the court at the time, usually he cannot later raise the question on appeal.

EXHIBIT — An article of tangible evidence introduced at a trial. Photographs, letters, weather reports, and other documents are common examples. Others are murder weapons, samples of earth or chemicals, parts of automobiles or machines, or other material that is of assistance in proving a relevant fact.

EX PARTE — On one side only; an act of proceeding by or for one party only, as opposed to an adversary proceeding in which there are two or more contesting parties.

EXPERT EVIDENCE — Testimony on some scientific, medical, or other technical matter by an expert, i.e., a person who by reason of training or experience is more qualified than the average man to speak on the subject under discussion. An expert witness is allowed to express an opinion, while an ordinary witness normally is not.

FELONY — A serious crime, as opposed to a misdemeanor. Felonies generally are crimes punishable by imprisonment in a

penitentiary; misdemeanors normally are punishable only by fine or confinement in jail, for not more than one year.

GARNISHMENT — A proceeding to enforce a judgment whereby the employer of the debtor, or any person holding money or other property owed or belonging to the debtor, can be compelled to pay it over to the creditor in order to satisfy the judgment against the debtor.

GUARDIAN AD LITEM — A person appointed by a court to look after the interests of a minor whose property or other interest is involved in a suit.

HARMLESS ERROR — An error committed by a trial court which an appellate court will overlook because it was not serious enough to justify reversing the judgment of the trial court, as opposed to prejudicial, or reversible, error.

HEARSAY — A statement which a witness has heard another person say, or a written statement offered in evidence without producing the author to testify as to the matters stated. Generally, hearsay evidence is not admissible because the unavailability of the author of the hearsay for cross-examination deprives the opponent of the offering party of the opportunity to test the reliability of the statement. There are some exceptions to the hearsay rule, however.

HOSTILE WITNESS — A witness who can be cross-examined by the party calling him because of his evident antagonism to that party.

HYPOTHETICAL QUESTION — A question asked of an expert witness, based on certain stated facts which have been proven or which the expert is asked to assume, and upon which the expert is asked to express his opinion.

IMPEACHMENT OF WITNESS — An attack on the credibility

- of a witness by the testimony of other witnesses or other evidence. Generally, a party cannot impeach a witness he has called.
- INDICTMENT** — The formal written accusation of crime, read to the defendant in open court after being “found” or “returned” by a grand jury.
- INFORMATION** — A formal written accusation of crime in the nature of an indictment, presented not by a grand jury but by some public official, such as a prosecutor.
- INJUNCTION** — A writ issued by a court to a defendant in a suit forbidding him from doing or continuing to do some act.
- INSTRUCTION** — A statement of the rules of law applicable to the evidence presented during a jury trial, in which the judge instructs the members of the jury to assist them in reaching a proper verdict. Sometimes the instructions are called the “charge.”
- INTERLOCUTORY** — Temporary; not final. An interlocutory order or decree, as opposed to a final order or decree, which disposes of some preliminary issue but does not decide the whole controversy before the court, further proceedings being necessary.
- INTERROGATORIES** — Written questions asked one party to a suit by an opposing party, which must be answered in writing and under oath, and which may be used as evidence by the party demanding them, if relevant.
- JUDGE** — A public officer appointed to preside over and administer justice in a court of law. The judge’s duty is to rule on all questions that come before him, without partiality, and according to the rules laid down in the constitutions, in statutes enacted by the legislature, and in previous decisions by higher courts. When there is no jury sitting in a case, the judge is the “trier of fact” as well as the decider of legal questions.

JUDGMENT — The formal decision of a court on the rights and claims of the parties to a suit. For example, the judgment in a suit for personal injury might be that the plaintiff recover \$5,000 from the defendant, or that he recover nothing. The judgment in a suit about ownership of a piece of land might be a declaration that it belongs to A, and not to B.

JURISDICTION — The power and authority of a court to render judgment in a certain controversy or a certain class of controversies. For example, one court may have jurisdiction to hear and determine civil cases but not criminal cases. Another court may have jurisdiction to hear and determine cases involving crimes committed in the county in which the court sits, but not crimes committed in another county. A court may be without jurisdiction to determine a suit brought against a certain defendant solely because that defendant has not been validly served with a subpoena or other process needed to subject him to the court's power.

LAWYER — An attorney-at-law, a counselor. One learned in the law and licensed to practice law. He is an officer of the courts in which he practices, and may be disciplined by a court or bar organization if he engages in unethical conduct or otherwise fails to live up to the standards of his profession. The relationship between lawyer and client is one of trust and confidence. A lawyer has an obligation to defend his client and the client's interests to the best of his ability, and cannot be compelled to tell anything the client has told him in confidence pursuant to their professional relationship.

LEADING QUESTION — A question asked of a witness in a manner which suggests the answer the questioner wants to get, objectionable because it results, in effect, in the questioning law-

yer, rather than the witness, providing the testimony. It is proper, however, to ask leading questions on cross-examination of a hostile witness or a witness called by the opposing side.

LEVY — The act of the sheriff or other officer of the court in seizing property of a debt or against whom a judgment has been rendered for the purpose of selling it to satisfy the judgment.

LIABLE — Bound or obliged to pay. If one negligently injures another, or breaks a contract with another, he is “liable” in damages to the other. A civil trial usually involves two issues: (1) liability — whether the defendant is “liable” to the plaintiff, and must pay him money, and (2) damages — if the defendant is liable, how much he must pay.

LITIGANT — A party to a suit; one engaged in litigation.

MAGISTRATE — An inferior judicial officer. In some states, a judge presiding over an inferior court where minor misdemeanors are tried. In others, an officer whose duties are limited mainly to issuing warrants and admitting arrested persons to bail; a justice of the peace.

MANDAMUS — A writ issued by a court to some official commanding him to perform some official duty.

MISTRIAL — An erroneous or invalid trial, rendered void by some serious, prejudicial error committed during the course of trial. For example, if a witness gives some testimony which is clearly inadmissible and so highly prejudicial that its effect cannot be substantially lessened by telling the jury to disregard it, the judge may declare a mistrial. In such a case, the incomplete trial would cease at that point, and another trial would begin at a later date with another jury.

MOOT — Unsettled; undecided by judicial decisions. A moot controversy is one in which it is sought to decide an abstract ques-

tion which does not actually arise from existing facts or rights. Courts generally confine themselves to deciding actual controversies arising from facts presented to them, and avoid deciding moot questions.

NEXT FRIEND — One acting in a legal proceeding for the benefit of an infant or other person without being formally appointed as guardian. For example, a suit for personal injuries may be “styled” like this: “Bill Jones, an infant under the age of 21 years, who sues by his father and next friend, Samuel Jones, plaintiff, v. John Brown, defendant.”

PAROL EVIDENCE — Oral or verbal evidence, as opposed to evidence contained in a deed or other formal written document.

PARTIES — The persons who are actively concerned in and affected by the prosecution or defense of a legal proceeding, e.g., the plaintiff and defendant.

PREJUDICIAL ERROR — Reversible error; a mistake committed by a trial court which makes it necessary for an appellate court to reverse its decision. Opposite of “harmless error.”

PREPONDERANCE OF THE EVIDENCE — The greater weight of the evidence. Not necessarily the greater number of witnesses, but the greater convincing weight of all the evidence. A fact is proved by a preponderance of the evidence if the jury believes from it that it is somewhat more likely that that fact exists than that it does not exist. This is a lower standard of proof than “beyond a reasonable doubt.” A fact is proved beyond a reasonable doubt only if it is very much more likely that it exists than that it does not exist; proof of the fact that a defendant committed a crime must be so clear as to be “inconsistent with any reasonable hypothesis of innocence,” although not necessarily proven beyond *any* doubt at all.

PROBATE — The act of proving a will as genuine, usually done before the judge or clerk of the probate court by witnesses to the will.

PROBATION — The practice of allowing a person convicted of an offense to go free, under the supervision of an officer of the court, on the condition that he be of good behavior.

PROXIMATE CAUSE — An act or omission which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury complained of, and without which that injury would not have occurred. Opposite of “remote cause.”

QUASH — To overthrow or vacate; to annul a summons or indictment, usually for some procedural defect.

QUO WARRANTO — A writ issued by the state demanding that an individual show under what right (“by what warrant”) he exercises some authority which can be exercised only through grant from the state.

REBUTTAL — Evidence or argument designed to defeat or take away the effect of the opponent’s evidence or argument.

REMAND — To send back. Sometimes when an appellate court reverses the decision of a trial court it will be able to render final judgment; often, it must instead “remand” the case to the trial court for further proceedings, e.g., a new trial. Sometimes, after a preliminary hearing, a court orders a prisoner “remanded” to the custody of the sheriff or other officer pending further proceedings.

RES ADJUDICATA — “A thing adjudged.” Once a particular controversy has been finally decided in a legal proceeding, it cannot be reopened. Another suit attempting to litigate the same question would be met by the plea of “*res adjudicata*,” meaning this has been settled once and that is the end of the matter.

SPECIFIC PERFORMANCE — An order by a court to “specifically perform” a contract. Normally a party who has broken a contract will be compelled to provide only a “substitute performance,” that is, he will be required to pay money as damages to compensate the other party for his failure to perform as he promised to. In some cases, a sum of money will be inadequate, and only the specific performance agreed upon will provide justice. For example, a court will usually require a contract for the sale of land to be specifically performed, since every piece of land is unique, and no sum of money, or other piece of land, will fully replace it. If the seller refuses to give a deed to land he has contracted to sell, the court may deliver a deed to the buyer.

STARE DECISIS (sta're dē-sī'sis) — “To stand decided.” The doctrine of judicial precedent: once a court has established a principle of law applicable to a certain set of facts, the same rule will be applied in the future to all cases involving substantially the same set of facts. The court may later overrule this principle, but will do so only for good cause, when fully convinced that the original rule was erroneous and would produce injustice if continued.

STAY — A temporary stop or delay in a judicial proceeding.

STIPULATION — A formal agreement by opposing parties as to the truth of certain relevant matters, dispensing with formal proof, often entered into by the parties to save time in a trial.

SUBPOENA (suh-pea-na) — “Under penalty.” A paper served on a party or witness compelling him to appear to answer or testify in court. If he fails to do so, he may suffer some penalty — e.g., judgment being rendered against a party, or being held in contempt of court.

SUBPOENA DUCES TECUM (suh-*pea*-na dū'kuss tē'kum) — "Bring with you, under penalty." A subpoena directed to a person in possession of records requiring him to bring those records with him and produce them in court on a certain day.

TESTIMONY — Evidence given in court orally by a witness, as opposed to documentary evidence or "real" evidence such as weapons, articles of clothing, and other tangible objects.

TRANSCRIPT — The official verbatim record of the testimony at a trial, usually typed up by a court reporter who has taken it down in shorthand.

VENUE — The county, city, judicial district, or other geographical area over which a certain court has power to exercise its jurisdiction.

VERDICT — The decision of a jury reported to the court. The final, formal decision is the judgment of the court, which usually carries out the verdict of the jury. If, however, the verdict is contrary to the law and the evidence, the judge may in some cases set it aside, and enter a contrary judgment "notwithstanding the verdict" (judgment *non obstante veredicto*).

VOIR DIRE (vwar dear) — "To speak the truth." The examination, before a trial starts, of the panel from which the jury is to be selected, consisting of questions by the judge and sometimes by the lawyers, to determine if some members of the jury panel are prejudiced, friends of one of the parties, or in some other way unqualified to serve or unlikely to render an impartial verdict. The aim of *voir dire* is to insure selection of a jury which "stands indifferent to the cause."

WARRANT — In its most common usage, a writ executed by a magistrate or other judicial officer, to a sheriff, policeman, or other officer, giving him authority to perform some act and com-

manding him to do it. For example, a criminal warrant directs the arrest of a named person for a specified offense; a search warrant authorizes search of a specified place for a specified thing. Sometimes the paper issued as the first step in a civil suit in a small claims court is called a civil warrant.

WITNESS — One who testifies as to what he has seen, heard, observed, or otherwise knows. An expert witness, and in a few instances a lay witness, can also testify as to his opinion.

WRIT — An order from a court commanding a certain thing to be done.

WRIT OF ERROR — The term sometimes used for an order from an appellate court agreeing to review the decision of a lower court.

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